

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY SEPTEMBER 3, 2003

AMENDED IN ASSEMBLY JULY 3, 2003

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AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 578

Introduced by Senator Alarcon

(Principal coauthor: Assembly Member Hancock)

February 20, 2003

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 578, as amended, Alarcon. Public contracts: sweatshop labor.

Existing law requires state agencies to provide in every contract for procurement of equipment, materials, or supplies, other than procurement related to a public works contract, that the contractor certify that no foreign-made equipment, materials, or supplies provided under contract are produced by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit thereof. Existing law requires that each contract make a certain specification regarding the contractor's cooperation as reasonably required by specified public officials, including the Department of Justice, and requires that specified matters for investigation be referred to public officials, including the Attorney General.

This bill would delete the foreign-made restriction, include apparel, garments and corresponding accessories *and the laundering thereof*, as defined, as a subject of procurements, impose new requirements upon contractors including ~~a code of conduct~~ *the Sweatfree Code of Conduct*, and *would* make Legislative findings and declarations in connection therewith. ~~This~~

This bill would eliminate the Department of Justice and the Attorney General from the provisions relating to a contractor's cooperation and to investigation referrals. This bill would also define "sweatshop labor," and specify, for that purpose, that forced labor and convict labor do not include certain work or services. ~~This~~

This bill would also impose a state-mandated local program by requiring contractors to ensure that their subcontractors comply in writing with a specified code of conduct, under penalty of perjury, and by providing that certain false certifications are a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares:
- 2 (a) The State of California spends millions in public funds on
- 3 garments, uniforms, materials, and supplies provided or laundered
- 4 by private bidders, vendors, and contractors.
- 5 (b) The state recognizes a public interest in avoiding subsidies
- 6 to bidders and contractors whose workplaces represent sweatshop
- 7 conditions, including violation of recognized standards of wages,
- 8 workplace health and safety, child labor, nondiscrimination and
- 9 nonharrassment, and the rights of workers to assemble and choose
- 10 to bargain collectively.
- 11 (c) Thousands of workers are employed in sweatshop
- 12 conditions in the State of California, and southern California has
- 13 been identified as the sweatshop capital of the United States.

(d) The state recognizes the rights of its citizens to information and choice with regard to the expenditure of its tax dollars.

(e) The state has an interest in providing incentives for responsible bidders.

(f) The state shall establish a “sweat-free” procurement policy and code of conduct that ensures that apparel, garments and corresponding accessories, equipment, materials, and supplies purchased by the ~~state or its agencies~~ *state, its agencies, or its employees through contracts, purchase orders, or uniform allowances or voucher programs*, be produced in workplaces free of sweatshop conditions.

SEC. 2. Section 6108 of the Public Contract Code is amended to read:

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor’s records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting ~~agency or the Department of Industrial Relations to~~ *agency, the Department of Industrial Relations, or the Department of Justice* determine the contractor’s compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions

1 specified in subdivision (a) when entering into a contract pursuant
2 to subdivision (a), may, subject to subdivision (c), have any or all
3 of the following sanctions imposed:

4 (A) The contract under which the prohibited apparel, garments
5 or corresponding accessories, equipment, materials, or supplies
6 were laundered or provided may be voided at the option of the state
7 agency to which the equipment, materials, or supplies were
8 provided.

9 (B) The contractor may be assessed a penalty which shall be the
10 greater of one thousand dollars (\$1,000) or an amount equaling 20
11 percent of the value of the apparel, garments or corresponding
12 accessories, equipment, materials, or supplies that the state agency
13 demonstrates were produced in violation of the conditions
14 specified in paragraph (1) of subdivision (a) and that were supplied
15 to the state agency under the contract.

16 (C) The contractor may be removed from the bidder's list for
17 a period not to exceed 360 days.

18 (2) Any moneys collected pursuant to this subdivision shall be
19 deposited into the General Fund.

20 (c) (1) When imposing the sanctions described in subdivision
21 (b), the contracting agency shall notify the contractor of the right
22 to a hearing, if requested, within 15 days of the date of the notice.
23 The hearing shall be before an administrative law judge of the
24 Office of Administrative Hearings in accordance with the
25 procedures specified in Chapter 5 (commencing with Section
26 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
27 The administrative law judge shall take into consideration any
28 measures the contractor has taken to ensure compliance with this
29 section, and may waive any or all of the sanctions if it is determined
30 that the contractor has acted in good faith.

31 (2) The agency shall be assessed the cost of the administrative
32 hearing, unless the agency has prevailed in the hearing, in which
33 case the contractor shall be assessed the cost of the hearing.

34 (d) (1) Any state agency that investigates a complaint against
35 a contractor for violation of this section may limit its investigation
36 to evaluating the information provided by the person or entity
37 submitting the complaint and the information provided by the
38 contractor.

39 (2) Whenever a contracting officer of the contracting agency
40 has reason to believe that the contractor failed to comply with the

1 requirements under paragraph (1) of subdivision (a), the agency
2 shall refer the matter for investigation to the head of the agency
3 and, as the head of the agency determines appropriate, to *either* the
4 Director of Industrial ~~Relations~~ *Relations or the Department of*
5 *Justice*.

6 (e) (1) For purposes of this section, the term “forced labor”
7 shall have the same meaning as in Section 1307 of Title 19 of the
8 United States Code.

9 (2) “Abusive forms of child labor” means any of the
10 following:

11 (A) All forms of slavery or practices similar to slavery, such as
12 the sale and trafficking of children, debt bondage, and serfdom and
13 forced or compulsory labor, including forced or compulsory
14 recruitment of children for use in armed conflict.

15 (B) The use, procuring, or offering of a child for prostitution,
16 for the production of pornography, or for pornographic
17 performances.

18 (C) The use, procuring, or offering of a child for illicit
19 activities, in particular for the production and trafficking of illicit
20 drugs.

21 (D) All work or service exacted from or performed by any
22 person under the age of 18 either under the menace of any penalty
23 for its nonperformance and for which the worker does not offer
24 oneself voluntarily, or under a contract, the enforcement of which
25 can be accomplished by process or penalties.

26 (E) All work or service exacted from or performed by a child
27 in violation of all applicable laws of the country of manufacture
28 governing the minimum age of employment, compulsory
29 education, and occupational health and safety.

30 (3) “Exploitation of children in sweatshop labor” means all
31 work or service exacted from or performed by any person under
32 the age of 18 years in violation of more than one law of the country
33 of manufacture governing wage and benefits, occupational health
34 and safety, nondiscrimination, and freedom of association.

35 (4) “Sweatshop labor” means all work or service extracted
36 from or performed by any person in violation of more than one law
37 of the country of manufacture governing wages, employee
38 benefits, occupational health, occupational safety,
39 nondiscrimination, or freedom of association.

1 (5) “Apparel, garments or corresponding accessories”
2 includes, but is not limited to, uniforms.

3 (6) Notwithstanding any other provision of this section,
4 “forced labor” and “convict labor” do not include work or
5 services performed by an inmate or a person employed by the
6 Prison Industry Authority.

7 (7) “State agency” means any state agency in this state.

8 (f) (1) On or before February 1, 2004, the Department of
9 Industrial Relations shall establish a contractor responsibility
10 program, including a Sweatfree Code of Conduct, to be signed by
11 all bidders on state contracts and subcontracts. Any state agency
12 responsible for procurement shall ensure that the Sweatfree Code
13 of Conduct is available for public review at least 30 calendar days
14 between the dates of receipt and the final award of the contract.
15 The Sweatfree Code of Conduct shall list the requirements that
16 contractors are required to meet, as set forth in subdivision (g).

17 (2) Upon implementation in the manner described in paragraph
18 (4), every contract entered into by any state agency for the
19 procurement or laundering of apparel, garments or corresponding
20 accessories, or for the procurement of equipment or supplies, shall
21 require that the contractor certify in accordance with the Sweatfree
22 Code of Conduct that no apparel, garments or corresponding
23 accessories, or equipment, materials, or supplies, furnished to the
24 state pursuant to the contract have been laundered or produced, in
25 whole or in part, by sweatshop labor.

26 (3) The appropriate procurement agency, in consultation with
27 the Director of Industrial Relations, shall employ a phased and
28 targeted approach to implementing the Sweatfree Code of
29 Conduct. Sweatfree Code of Conduct procurement policies
30 involving apparel, garments and corresponding accessories may
31 be permitted a phasein period of up to one year for purposes of
32 feasibility and providing sufficient notice to contractors and the
33 general public. The appropriate procurement agency, in
34 consultation with the Director of Industrial Relations, shall target
35 other procurement categories based on the magnitude of verified
36 sweatshop conditions and the feasibility of implementation, and
37 may set phasein goals and timetables of up to three years in order
38 to achieve compliance with the principles of the Sweatfree Code
39 of Conduct.

(4) *In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.*

(5) To ensure public access and confidence, the—state Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

~~(5)~~

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors

1 whose locations for manufacture or assembly are outside the
2 United States, those contractors shall ensure that their
3 subcontractors comply with the appropriate laws of countries
4 where the facilities are located.

5 (2) Contractors and subcontractors shall maintain a policy of
6 not terminating any employee except for just cause, and
7 employees shall have access to a mediator or to a mediation
8 process to resolve certain workplace disputes that are not regulated
9 by the National Labor Relations Board.

10 (3) Contractors and subcontractors shall ensure that workers
11 ~~are paid wages and provided benefits that are sufficient to lift a~~
12 ~~family above poverty. The Director of Industrial Relations shall~~
13 ~~determine a method for establishing appropriate wage and benefit~~
14 ~~levels for production that occurs outside the United States. are~~
15 *paid, at a minimum, wages and benefits in compliance with*
16 *applicable local, state, and national laws of the jurisdiction in*
17 *which the labor, on behalf of the contractor or subcontractor, is*
18 *performed. Whenever a state agency expends funds for the*
19 *procurement or laundering of apparel, garments, or*
20 *corresponding accessories, or the procurement of equipment,*
21 *materials, or supplies, other than procurement related to a public*
22 *works contract, the applicable labor standards established by the*
23 *local jurisdiction through the exercise of either local police powers*
24 *or local spending powers in which the labor, in compliance with*
25 *the contract or purchase order for which the expenditure is made,*
26 *is performed shall apply with regard to the contract or purchase*
27 *order for which the expenditure is made, unless the applicable*
28 *local standards are in conflict with, or are explicitly preempted by,*
29 *state law. A state agency may not require, as a condition for the*
30 *receipt of state funds or assistance, that a local jurisdiction refrain*
31 *from applying the labor standards that are otherwise applicable to*
32 *that local jurisdiction. The Department of Industrial Relations*
33 *may, without incurring additional expenses, access information*
34 *from any nonprofit organization, including, but not limited to, the*
35 *World Bank, that gathers and disseminates data with respect to*
36 *wages paid throughout the world, to allow the Department of*
37 *Industrial Relations to determine whether contractors and*
38 *subcontractors are compensating their employees at a level that*
39 *enables those employees to live above the applicable poverty level.*

1 (4) All contractors and subcontractors must comply with the
2 overtime laws and regulations of the country in which their
3 employees are working.

4 (5) All overtime hours shall be worked voluntarily. Workers
5 shall be compensated for overtime at either (A) the rate of
6 compensation for regular hours of work, or (B) as legally required
7 in the country of manufacture, whichever is greater.

8 (6) No person may be employed who is younger than the legal
9 age for children to work in the country in which the facility is
10 located. In no case may children under the age of 15 years be
11 employed in the manufacturing process. Where the age for
12 completing compulsory education is higher than the standard for
13 the minimum age of employment, the age for completing
14 education shall apply to this section.

15 (7) There may be no form of forced labor of any kind, including
16 slave labor, prison labor, indentured labor, or bonded labor,
17 including forced overtime hours.

18 (8) The work environment shall be safe and healthy and, at a
19 minimum, be in compliance with relevant local, state, and national
20 laws. If residential facilities are provided to workers, those
21 facilities shall be safe and healthy as well.

22 (9) There may be no discrimination in hiring, salary, benefits,
23 performance evaluation, discipline, promotion, retirement or
24 dismissal on the basis of age, sex, pregnancy, maternity leave
25 status, marital status, race, nationality, country of origin, ethnic
26 origin, disability, sexual orientation, gender identity, religion, or
27 political opinion.

28 (10) No worker may be subjected to any physical, sexual,
29 psychological, or verbal harassment or abuse, including corporal
30 punishment, under any circumstances, including, but not limited
31 to, retaliation for exercising his or her right to free speech and
32 assembly.

33 (11) No worker may be forced to use contraceptives or take
34 pregnancy tests. No worker may be exposed to chemicals,
35 including glues and solvents, that endanger reproductive health.

36 (12) Contractors and bidders shall list the names and addresses
37 of each subcontractor to be utilized in the performance of the
38 contract, and list each manufacturing or other facility or operation
39 of the contractor or subcontractor for performance of the contract.
40 The list, which shall be maintained and updated to show any

1 changes in subcontractors during the term of the contract, shall
2 provide company names, owners or officers, addresses, telephone
3 numbers, e-mail addresses, and the nature of the business
4 association.

5 (h) Any person who certifies as true any material matter
6 pursuant to this section that he or she knows to be false is guilty
7 of a misdemeanor.

8 (i) *The provisions of this section, as amended by the act adding*
9 *this subdivision, shall be in addition to any other provisions that*
10 *authorize the prosecution and enforcement of local labor laws and*
11 *may not be interpreted to prohibit a local prosecutor from bringing*
12 *a criminal or civil action against an individual or business that*
13 *violates the provisions of this section.*

14 SEC. 3. No reimbursement is required by this act pursuant to
15 Section 6 of Article XIII B of the California Constitution because
16 the only costs that may be incurred by a local agency or school
17 district will be incurred because this act creates a new crime or
18 infraction, eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section 17556 of
20 the Government Code, or changes the definition of a crime within
21 the meaning of Section 6 of Article XIII B of the California
22 Constitution.

